

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2012-252-WS - ORDER NO. 2013-107

FEBRUARY 19, 2013

IN RE: Request of Kiawah Island Utility,) ORDER APPROVING
Incorporated for Determination Regarding) INTERNAL TRANSFER
Internal Transfer of Stock) OF STOCK, LOAN
) AGREEMENT, AND
) SETTLEMENT
) AGREEMENT

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application for approval to transfer stock and to enter into a loan agreement filed by Kiawah Island Utility, Inc. (“KIU” or “the Company”). KIU requests permission to transfer all of its stock from Kiawah Resort Associates, L.P. (“KRA”) to Bear Island Holding Company, LLC (“BIH”), and for approval of a loan from Wells Fargo Bank, National Association (“WFB”) to pay off the loan of the existing lender, RBC Bank, to use for working capital, and to establish a credit facility to allow additional monies to be used to pay for the construction of a second supply line of potable water to Kiawah Island. Subsequent to the filing of the Application, all parties entered into a Settlement Agreement (Order Exhibit No. 1). As a result, we approve all relief sought in the Application, and we approve the Settlement Agreement as being in the public interest. The merits hearing scheduled for February 21, 2013, is cancelled.

The Commission’s Clerk’s Office requested that the Company publish at its own expense a Notice of Filing in newspapers of general circulation in the affected areas, one

time, and provide Proof of Publication. The Clerk's Office also required that the Company furnish at its own expense, by U.S. Mail, or by electronic mail to those customers who have agreed to receive their notices by way of electronic mail, a Notice of Filing to each Customer and provide proof of service. The Company furnished both Proof of Publication of the newspaper notice and proof of service of the Notice to the individual customers. A Petition to Intervene was filed by the Town of Kiawah Island.

The request to transfer the stock is predicated on a requirement from WFB as a condition of the loan that the stock of the utility be transferred to another parent corporation. In this case, KIU proposes that their stock, which is presently held by KRA, be transferred to BIH. The ownership and control of KRA and BIH are identical. The Company states that the transfer of the stock would have no adverse effect on the operations of KIU, since management and control would remain in the same hands. KIU would continue to operate the utility, and there are no proposed changes to management or operations of the utility.

With regard to the proposed loan and credit facility, KIU previously refinanced with RBC Bank all of its existing debt with Bank of America. KIU and KRA have been engaged in negotiations with WFB for WFB to lend monies to KIU that would pay off the RBC loan and extend additional credit up to a maximum total loan amount of up to \$19,200,200. A portion of these monies would be used to establish a credit facility to allow additional monies to be used to pay for the construction of a second water supply line from St. Johns Water Company to Kiawah Island, and to fund general working capital.

Both the transfer and the loan are subject to approval by this Commission, as per the provisions of 10 S.C. Code Ann. Regs. 103-541 and 103-743 (Supp. 2012). The regulations require Commission approval of contracts or agreements which impact the Company's ability to provide the utility service. We agree that the agreements before this Commission in the present case require approval under the terms of the Regulations.

As previously referenced, we note that a Settlement Agreement has been filed which resolves all issues among the parties to the case. There is no opposition to the relief requested. The Settlement Agreement calls for certain reporting requirements by the Company, should the loan be obtained as proposed.

We have examined the matters before us, including the entire record of the case, and hold that the relief requested should be approved as filed. Accordingly, the transfer of stock of KIU from KRA to BIH is approved, as is the loan agreement with WFB, said proceeds to be used as outlined above. Additionally, we approved the Settlement Agreement among the parties, since it is in the public interest to do so. We believe that the reporting requirements contained in the Settlement Agreement are reasonable and will furnish useful information, should the Company receive the WFB loan proceeds as proposed.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



David A. Wright, Chairman

ATTEST:



Randy Mitchell, Vice Chairman

(SEAL)

BEFORE

**THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 2012-252-WS

IN RE: Request of Kiawah Island Utility, Inc. For Approval To Transfer Stock And Enter Into Loan Agreement))))	SETTLEMENT AGREEMENT
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This Settlement Agreement is made by and among, the Town of Kiawah Island, Kiawah Island Utility, Inc. ("KIU") and the South Carolina Office of Regulatory Staff ("ORS") (hereinafter collectively referred to as the "Parties" or sometimes individually as a "Party").

WHEREAS, on September 21, 2012, KIU filed with the Public Service Commission of South Carolina ("Commission") an Application for Approval to Transfer Stock and to enter into Loan Agreement ("Application") pursuant to 26 SC. Code Regs R. 103-704, R. 103-504, R. 103-743, R. 103-541 (Supp. 2011) and the Commission's Rules of Practice and Procedure;

WHEREAS, the Application specifically requests (1) to transfer all stock in KIU from Kiawah Resort Associates, L.P. to Bear Island Holding Company, LLC, and (2) for approval of a loan from Wells Fargo Bank, National Association to pay off the loan of the existing lender, RBC Bank, to use for working capital, and to establish a credit facility to allow additional monies to be used to pay for the construction of a second supply line of potable water to Kiawah Island.

WHEREAS, the ownership and control of Kiawah Resort Associates, L.P. and Bear Island Holding Company, LLC are identical and management and control will remain with the same owners;

WHEREAS, the Parties to this Settlement Agreement are parties of record in the above-captioned docket and there are no other parties in this docket;

WHEREAS, the Parties have each determined that their respective interests and for ORS, the public interest, would best be served by settling the above-captioned case;

WHEREAS, given this Settlement Agreement, the parties agree it would assist judicial economy if the hearing in this matter is canceled as all issues among the parties are resolved.

WHEREAS, the parties' will request to cancel the hearing in this matter as set forth in the accompanying Joint Request to Cancel Hearing;

WHEREAS, the parties agree to a resolution of their issues on the terms and conditions as set forth below:

1. If KIU obtains the loan described in this docket, KIU agrees to file a report annually with ORS and the Commission under this docket number, with an exact copy mailed to the individuals identified in Exhibit A.

2. For loan amounts drawn, the annual report shall schedule the amount and category of expenditures. The annual report shall account for all loan proceeds drawn since the inception of the loan.

3. The time for filing the annual report is to begin on the date of the loan with the first report due no later than 60 days afterwards. Thereafter, the annual report is due no later than 60 days after the anniversary date of the loan. The last annual report is due no later than 60 days after the loan is drawn in full, or earlier upon agreement by the parties with notification to the Commission.

4. The Parties agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission as

a fair, reasonable and full resolution of the above-captioned proceeding. The Parties agree to use reasonable efforts to defend and support any Commission Order issued approving this Settlement Agreement and the terms and conditions contained herein.

5. The Parties agree that this Settlement Agreement does not constrain, inhibit or impair in any way the arguments or positions they may choose to assert in future proceedings. If the Commission should decline to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement without penalty.

6. This Settlement Agreement shall be interpreted according to South Carolina law.

7. Each Party acknowledges its consent and agreement to this Settlement Agreement by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of this Settlement Agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement.

8. The Parties agree that no other evidence will be offered by the Parties other than what has already been admitted including this Settlement Agreement.

9. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]

Representing and binding the South Carolina Office of Regulatory Staff:

Shannon Bowyer Hudson Date: Jan. 28, 2013
Shannon Bowyer Hudson, Esquire
South Carolina Office of Regulatory Staff
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Columbia, South Carolina 29201
Phone: (803) 737-0889
Fax: (803) 737-0895
Email: shudson@regstaff.sc.gov

WE AGREE:

Representing and binding the Town of Kiawah Island



Date: 1-28, 2013

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WE AGREE:

Representing and binding Kiawah Island Utility, Inc.



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Date: June 28, 2013

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2012-252-WS

IN RE: Request of Kiawah Island Utility, Inc.)
For Approval To Transfer Stock And)
Enter Into Loan Agreement)
_____)

**SETTLEMENT AGREEMENT
(EXHIBIT A)**

Shannon Bowyer Hudson
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Representing Office of Regulatory Staff

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